

IN THE CIRCUIT COURT OF
THE 11TH JUDICIAL CIRCUIT
IN AND FOR DADE COUNTY, FLORIDA
GENERAL JURISDICTION DIVISION
CASE NO. 94-08273 CA (22)

HOWARD A. ENGLE, M.D.,
et al.,

Plaintiffs,

vs.

R.J. REYNOLDS TOBACCO
COMPANY, et al.,

Defendants.

Miami-Dade County Courthouse
Miami, Florida
Monday, 9:42 a.m.
October 19, 1998

TRIAL - VOLUME 97

The above-styled cause came on for trial
before the Honorable Robert Paul Kaye, Circuit Judge,
pursuant to notice.

APPEARANCES:

STANLEY M. ROSENBLATT, ESQ.

SUSAN ROSENBLATT, ESQ.

On behalf of Plaintiffs

DECHERT PRICE & RHOADS

ROBERT C. HEIM, ESQ.

SEAN P. WAJERT, ESQ.

On behalf of Defendant Philip Morris

COLL DAVIDSON CARTER SMITH SALTER & BARKETT

NORMAN A. COLL, ESQ.

On behalf of Defendant Philip Morris

ZACK KOSNITZKY

STEPHEN N. ZACK, ESQ.

On behalf of Defendant Philip Morris

CARLTON FIELDS WARD EMMANUEL SMITH & CUTLER

R. BENJAMINE REID, ESQ.

On behalf of Defendant R.J. Reynolds

KING & SPALDING

MICHAEL RUSS, ESQ.

RICHARD A. SCHNEIDER, ESQ.

On behalf of Defendant Brown & Williamson

CLARKE SILVERGLATE WILLIAMS & MONTGOMERY

KELLY ANNE LUTHER, ESQ.

On behalf of Defendants Liggett Group

and Brooke Group

SHOOK HARDY & BACON

EDWARD A. MOSS, ESQ.

WILLIAM P. GERAGHTY, ESQ.

On behalf of Defendant Brown & Williamson

JAMES T. NEWSOM, ESQ.

On behalf of Defendant Lorillard

DEBEVOISE & PLIMPTON

JOSEPH R. MOODHE, ESQ.

ANNE COHEN, ESQ.

On behalf of Defendant The Council for Tobacco Research

(APPEARANCES - Continued)

GREENBERG TRAURIG HOFFMAN LIPOFF ROSEN & QUENTEL

DAVID L. ROSS, ESQ.

On behalf of Defendant Lorillard

MARTINEZ & GUTIERREZ
JOSE MARTINEZ, ESQ.
On behalf of Defendant Dosal Tobacco Corp.
and Tobacco Institute
KASOWITZ BENSON TORRES & FRIEDMAN
AARON MARKS, ESQ.
NANCY STRAUB, ESQ.
On behalf of Defendants Liggett Group
and Brooke Group
JONES DAY REAVIS & POGUE
RICHARD M. KIRBY, ESQ.
On behalf of Defendant RJ Reynolds

4

1 (Whereupon, the following proceedings were had:)
2 THE COURT: Good morning. Please, have a
3 seat. There's a matter that you need to take up with
4 the Court?
5 MR. MOSS: Just for a moment, sidebar.
6 * * * * * SIDEBAR * * * * *
7 THE COURT: All right. Technicians, how long
8 is it going to take you to get that?
9 UNIDENTIFIED VOICE: They are retrieving a
10 mike clamp for us.
11 THE COURT: Mr. Rosenblatt, they are going to
12 put a clamp on that table.
13 MR. ROSENBLATT: No problem.
14 THE COURT: Court will be in recess for a few
15 minutes until we can get the sound system straightened
16 out. Then we will bring the jury in.
17 (A brief recess was taken.)
18 THE BAILIFF: Bringing in the jury. Jurors
19 entering the courtroom.
20 (The panel of jurors entered the courtroom.)
21 THE COURT: Have a seat, everybody. Thank
22 you. We have a full house today. Good morning.
23 JURORS: Good morning.
24 THE COURT: We're going to go through this a
25 lot. Good morning. We would hope to have gotten under

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1 way at 9:30, but as things happen, we had a little bit
2 of delay, and that's expected on most occasions,
3 especially the first day.
4 What we're going to do at this point is to
5 give you some overview as to what this case is about
6 and what you're doing here and what we expect and how
7 trials operate, give you some idea of what is going to
8 happen here in the courtroom.
9 You've each been given a clip board with a
10 pen or pencil, whatever it may be, so that you can take
11 notes.
12 Now, the case naturally is going to be
13 somewhat lengthy, and I can only advise you that some
14 of you will want to take copious notes and write down
15 everything, and that's going to be impossible. I think
16 sometimes when you start taking notes, you have a
17 tendency to take too many notes, and by doing so, you
18 sort of miss a lot of testimony. But that's an
19 individual choice.
20 So it will be a while, and it may be several
21 weeks, several months, before we finish with this case,
22 and lord knows how many notes you're going to take.
23 But the notes are there to help you understand and
24 assimilate the evidence and testimony.

1 obligation, and that is to try to put things together
2 in a very cohesive fashion so you will understand
3 everything from start to finish. This is their
4 obligation, too, and at the end of the case when they
5 sum up, they will try to put it all in perspective.

6 So the notes are there for your convenience,
7 and take as many or as few as you wish, but experience
8 indicates that sometimes when you take too many it's
9 counterproductive.

10 In any event, this is the first day of the
11 trial. You all are here, and we are seated. So the
12 seat chart, as everyone knows, number one starts with
13 the lady in blue in the front row and runs this way to
14 my left, and then the lady in white on the top row is
15 the next one in order and runs down this way to the
16 end. So you know who is who.

17 This case is the case of Howard A. Engle, MD,
18 Robert Angell, Frosene Stevens, Frank Amodeo, Loren
19 Lowery and Angie Della Vecchia, and all others
20 similarly situated as plaintiffs.

21 As we told you before, they're suing the
22 defendants. The defendants are: R.J. Reynolds Tobacco
23 Company, Philip Morris Incorporated, Philip Morris
24 U.S.A., Philip Morris Companies, Inc., Lorillard
25 Tobacco Company, Lorillard, Inc., The American Tobacco

1 Company, Brown & Williamson Tobacco Corp., Liggett
2 Group, Inc., Brooke Group Ltd., Inc., Dosal Tobacco
3 Corporation, The Council for Tobacco Research-U.S.A.,
4 Inc. and Tobacco Institute, Inc. Those are the
5 defendants.

6 And I will introduce the attorneys again
7 since it's been awhile since some of you have met those
8 folks before. Let's see. You have a new list here?

9 Representing the plaintiffs, as we told you
10 before, are Susan and Stanley Rosenblatt at counsel
11 table. And seated at counsel table with them is
12 Dr. Engle?

13 MR. ROSENBLATT: Yes.

14 THE COURT: And Mr. --

15 MR. ROSENBLATT: Amodeo.

16 THE COURT: Mr. Amodeo. Okay.

17 The defendants, Philip Morris is represented
18 by Robert Heim.

19 MR. HEIM: Good morning.

20 THE COURT: And Stephen Zack of Zack &
21 Kosnitzky.

22 MR. ZACK: Good morning.

23 THE COURT: The R.J. Reynolds Tobacco Company
24 is represented by Rick Kirby of Jones Day, and Ben Reid
25 of Carlton Fields.

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1 MR. KIRBY: Good morning.

2 THE COURT: The Brown & Williamson Tobacco
3 Corporation and The American Tobacco Company are
4 represented by Richard Schneider of King & Spalding and
5 Edward Moss of Shook Hardy.

6 MR. MOSS: Good morning.

7 THE COURT: Lorillard Tobacco Company is

8 represented by Jim Newsom of Shook Hardy and David Ross
9 of Greenberg Traurig.
10 MR. ROSS: Good morning.
11 THE COURT: Dosal Tobacco Corporation is
12 represented by Jose Martinez of Martinez and Gutierrez.
13 MR. MARTINEZ: Good morning.
14 THE COURT: The Council for Tobacco Research
15 is represented by Joe Moodhe and Anne Cohen of
16 Debevoise & Plimpton.
17 MR. MOODE: Good morning.
18 THE COURT: The Tobacco Institute is
19 represented by Jose Martinez of Martinez & Gutierrez.
20 The Liggett Brooke and Brooke Group Limited
21 are represented by Kelly Anne Luther of Clarke
22 Silverglate Williams & Montgomery, and Aaron Marks and
23 Nancy Staub of Kasowitz Benson Torres & Friedman.
24 MS. LUTHER: Good morning.
25 THE COURT: I think before we told you that

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1 Mary Santacroce and Michael Fay would be representing I
2 think one of the Liggett or Brooke Group. There's been
3 a change to Aaron Marks and Nancy Staub.
4 All right. Those are the folks who are going
5 to take part in this case as the attorneys.
6 We told you before that this was a class
7 action lawsuit. And class action lawsuits are somewhat
8 different than most lawsuits because it is not tried
9 all at one time. It is broken up into various stages
10 and phases or phases and stages, as the case may be.
11 And we do that because there are a lot of
12 issues and a lot of elements to be decided by a jury.
13 And in this particular case, we are breaking this up
14 into three separate phases, and each phase has certain
15 stages within it.
16 We are now in Phase I. And in Phase I there
17 are going to be certain elements that will be presented
18 to you for your determination. After you make a
19 determination in the first phase of the case, we will
20 then get into another phase of the case for a
21 determination on other issues, if we get to that point.
22 Each phase can be separated from the other.
23 In the first phase, the one that you will be concerned
24 with at this point, will be the common elements which
25 relate to all of the members of the class, and there

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1 are a number of those common elements that have to be
2 decided.
3 I think we discussed that with you earlier
4 on: Such elements as, is tobacco addictive? Number
5 one. Is tobacco causing or producing of diseases such
6 as cancer and the like? There are many issues like
7 that in Phase I, which is common issues to be decided
8 generically.
9 There may be some issues in the first phase
10 of the trial that may relate to a concept we call
11 punitive damages or the entitlement thereto; not the
12 actual money damages but just the actual entitlement
13 thereto, or things of that nature which will take place
14 in the first phase of the trial.
15 The second phase, when we get there, will be
16 such issues as the individual class representative

17 cases, at which time they will present evidence as to
18 their own cases and their own injuries, and
19 determination will have to be made at that time whether
20 or not there is a causation effect as far as they are
21 concerned, and whether or not they are entitled to
22 damages, whether compensatory or punitive damages.

23 And the third stage is the individual cases
24 of the rest of the class members throughout the State
25 of Florida, but you probably won't be involved in any

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1 of that.

2 All right. That sort of sets the stage as to
3 what we're talking about in a class action lawsuit.
4 And in this particular case, we told you some time ago,
5 just to round it out again, that the allegations are
6 made by the plaintiffs, and they are represented by the
7 class representatives, and these are allegations
8 relatively common to all members of the class of people
9 who smoke or have smoked cigarettes in the State of
10 Florida and claim they have been injured or had
11 diseases caused by tobacco.

12 Some of the allegations were, as I explained
13 the first time, that the tobacco companies breached
14 certain warranties about their product when they put
15 their product on the market.

16 There is an allegation that they were
17 negligent in producing and putting on the market a
18 product which they knew or should have known would
19 cause injury or illness and affect health.

20 There's an allegation of fraud and conspiracy
21 in that the tobacco companies either misled the
22 American public about the effects of tobacco and health
23 or intentionally, sometime over the period of years,
24 had concealed and withheld from the American public a
25 lot of information which was critical to the issues of

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12

1 health and general health and addiction.

2 The allegation of conspiracy is that tobacco
3 companies conspired each with the other to commit these
4 wrongful acts.

5 And it's on this basis that the plaintiffs
6 allege the tobacco companies should be held responsible
7 for the end result, which would be the illness
8 attributable to the smokers in the State of Florida who
9 smoked and became ill.

10 The tobacco companies, on the other hand,
11 deny all of these allegations and claim that the issues
12 of health and the effect of tobacco on health have been
13 known for a long time; the individual smokers knew of
14 these risks and assumed those risks.

15 The tobacco companies claim they did not
16 manipulate the level of nicotine within cigarettes as
17 claimed by the plaintiffs, and that they are not
18 responsible in any way for any effect as an end result
19 of smoking cigarettes.

20 The issues being joined, we have a lawsuit.
21 You're here, and you are selected as a jury to try
22 these issues. It will be a relatively long trial.
23 It's going to take, as we said earlier, maybe three

24 months or more to try this case. I don't know. Nobody
25 knows how long it's going to take.

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13

1 But you are here for the duration, and
2 hopefully you will all remain healthy and will not get
3 sick or otherwise incapacitated, and we hope that
4 everyone will be able to sit through exactly the entire
5 trial.

6 Now, we have a lot of folks in the jury box.
7 Some of you are alternates, and some of you are the
8 regular panel. And I'm not going to tell you who's
9 who. The reason I say that is because I want you folks
10 to listen to everything that goes on during the trial,
11 because if somebody on the original panel who will
12 decide some of the issues gets ill, somebody is going
13 to have to step in and take their place with the full
14 knowledge of what happened during the course of the
15 trial up to that point. And that's where the
16 alternates come in.

17 So it really doesn't make any difference
18 where you are seated or in what order you are seated.
19 Some of you will be alternates and some of you will be
20 on the regular panel. So I want all of you to pay
21 attention to everything that goes on during the course
22 of the trial. And that's one of the reasons we gave
23 you the note pads, because being in a long trial you
24 may have a tendency to forget some of the things you
25 thought were important. So just jot them down.

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14

1 Speaking of the notes, please do not read
2 other folks' notes. I know you are very close to each
3 other and it's easy just to look over and see what
4 someone else is writing. But that's rather private as
5 far as they're concerned. So I would prefer if you
6 didn't review anybody else's notes.

7 The notes will be taken up at the end of each
8 day and locked up in a cabinet. Nobody will have
9 access to them.

10 When you start writing your notes, please
11 take the first page of your pad and turn it over and
12 start with the second page so that we will have a cover
13 for your notebook. And the only thing that needs to be
14 on the first page is either your badge number -- yes,
15 just the badge number will do. No names. Just the
16 badge number, so that we'll know who belongs to what.
17 That will take care of the notebook.

18 I should introduce you again to the court
19 personnel. Olga Delachieza is the clerk who will take
20 care of all of the duties and functions of the
21 secretary for the Court. You've met the bailiffs,
22 Mr. Bott and Mr. Mazloom, wherever they are.

23 THE CLERK: He's outside.

24 THE COURT: And the court reporters will be
25 changing from day to day. I'm not sure who is going to

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15

1 be here and who isn't going to be here on any given
2 day. But I think you're pretty familiar with the court

3 reporting that's going on.

4 Let me explain to you what a trial is all
5 about. For those of you folks who have never been
6 through a trial or seen a trial, you know that when
7 accusations are made in a complaint and the defense has
8 responded, the issues have been joined, as I said, and
9 we have a trial.

10 How does it work? What happens? In the
11 beginning, you know very little about this case. You
12 know a lot about this case as compared to other cases
13 because of what we've talked about and the issues that
14 are involved. That's one thing. But you don't know it
15 all, and you don't know how it's going to fit in and
16 dovetail.

17 So to put you on some sort of even ground so
18 you understand what's to be coming down the road and
19 the sequence of events, the attorneys have an
20 opportunity to make what we call an opening statement
21 to you. Well, this opening statement is not designed
22 to be evidence. In fact, it is not evidence. And you
23 should not consider it to be evidence in the case.

24 What the lawyers say here is not evidence.
25 The witnesses will supply the evidence from the witness

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16

1 chair. But what the lawyers do is try to give you a
2 road map as to what the case is all about and how it's
3 going to play out.

4 Now, the purpose of an opening statement is
5 not to influence you or make you decide anything.
6 That's reserved for the closing statement at the end of
7 the case when they try to persuade you that their side
8 is more right than the other side.

9 The purpose of an opening statement is merely
10 to guide you through the history of the case, bring you
11 up to date on what is going to be presented to you.
12 Some people liken it to a picture puzzle, one of the
13 jigsaw puzzles. You buy a puzzle. On the cover of the
14 box is the picture. You open the box and there are all
15 these little pieces. You put the pieces together and
16 you allegedly get the picture.

17 Some people say that's a little bit too
18 complicated, but I like to liken it to a table of
19 contents in the book. You open the book. There is a
20 table of contents, what the chapters are going to be
21 about, but they don't tell you everything. They tell
22 you there is a sequence of events and chapters, and you
23 have to read the chapters in order to find out what's
24 going on. You can stylize it any way you wish. It's
25 merely an introduction to what the case is all about.

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17

1 The lawyers are not here to persuade you that
2 their position is more right than the other, as I said,
3 nor to educate you as to their position; only merely to
4 present to you what they expect the evidence will be.

5 It's rather narrow. It may take a little
6 longer in this case to explain the history of the case
7 and all that, but it should be narrowly construed as
8 far as the effect of what the opening statement is.
9 Both sides will have an opportunity to make an opening

10 statement to you before the trial begins or at the
11 beginning of the trial.

12 After the opening statement is made, the
13 plaintiff will proceed. Now, the plaintiff brought the
14 case to court, therefore, they have the burden of
15 proof. And so they will present their case first, and
16 they will present witnesses. The witnesses will come
17 and be seated in this chair called the witness chair.
18 They will be sworn under oath to tell the truth, and
19 they will be questioned by the plaintiffs' attorneys.

20 During the course of the questioning of the
21 witnesses, the other side, if they feel that some of
22 the questions are inappropriate and not in conformity
23 with the legal requirements, may say "objection, "
24 which is a clue to the Court that there is some
25 decision that has to be made by the Court about the

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18

1 process and the efficacy of the question.

2 I may rule directly from the Bench and say
3 either "sustained," which means that I will agree with
4 that objection, or I will overrule the objection and
5 allow the witness to testify.

6 Or I might call the parties to a sidebar
7 conference, and you've seen sidebar conferences, where
8 we will discuss some of the legal aspects of the
9 objection. Hopefully, we will do so quietly in such a
10 degree that you will not overhear what we say. Again,
11 some of you might read lips, so I don't want you
12 looking over here and reading our lips. But we'll try
13 and be as quiet as we can and as unobtrusive as we can.
14 But what we talk about sidebar is really something that
15 you folks should not be concerned about.

16 Now, I can't always guarantee that it's going
17 to be quiet. I can't always guarantee you won't hear a
18 word or phrase or even a sentence or two. So I'm going
19 to ask you wherever humanly possible to disregard
20 anything you hear in a sidebar conference, because
21 anything that you need to know to decide this case will
22 be presented to you in open court so you all hear the
23 same thing at the same time.

24 And other than having you pick up and go out
25 of the room every time we have a sidebar, which is very

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1 inconvenient, we will come over here and talk hopefully
2 quiet enough that we can resolve our problems without
3 you people hearing what we talk about.

4 Now, if an objection is raised at any time
5 during the trial, you are not to speculate on the
6 reasons for that objection. If the Court feels the
7 objection is appropriate and sustains it, the witness
8 will not be allowed to answer it. But if the Court
9 feels the objection is legally insufficient, then the
10 witness will be allowed to answer it.

11 So if an objection is sustained, you are not
12 to speculate on what the witness may have said had they
13 been allowed to answer that question.

14 These are situations that you will see
15 throughout the course of the trial: the interplay of
16 the legal aspects of the questioning and the

17 cross-examination as we go through.
18 I also will advise you that when a party puts
19 on a witness generally, they are restricted as to the
20 types of questions that can be asked. Generally
21 speaking, when a party puts on a witness, they can ask
22 only what we call direct questions, and not
23 cross-examination-style questions or leading questions.
24 They cannot lead the witness. That's really the import
25 of what we're talking about. They have to let the

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1 witness present the answers and the evidence.
2 On cross-examination, however, a party doing
3 cross-examination may lead the witness. You'll see how
4 that interplay works from one party to the other,
5 depending on who is doing the direct examination and
6 who is doing the cross-examination.
7 The rules change under certain circumstances,
8 depending on the type of witness and the nature of the
9 testimony. But generally speaking, the person who puts
10 on a witness only asks direct questions; a
11 cross-examiner can ask leading questions.

12 All right. During the questioning of a
13 witness, certain documents or physical things such as,
14 I don't know, whatever is physical, will be introduced
15 or sought to be introduced in trial as evidence or an
16 exhibit in evidence. These will be marked by numbers,
17 and the clerk will be responsible for marking and
18 accepting all of the exhibits that will be introduced
19 into evidence.

20 Now, there are two ways of talking about
21 exhibits: One is to mark an exhibit for identification
22 purposes, at which time it is not yet a piece of
23 evidence. It can only be referred to as an exhibit for
24 identification. And the other is, after the Court
25 accepts an exhibit as an exhibit in evidence, it will

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21

1 be so marked. And then the contents of that document
2 or thing can be used and shown or read to the jury. So
3 there's two aspects of exhibits.

4 During the course of the presenting of the
5 witness, as I said, the plaintiff will present the
6 witness; the defense will raise any objections they
7 feel are appropriate at that time. And when the
8 plaintiff has finished asking that witness all the
9 questions they wanted to ask, they will turn the
10 witness over to the defense for the cross-examination.
11 And as I said, it's at that time that the other side,
12 in this case, the defense to begin with, will ask
13 leading-type questions on cross-examination.

14 The plaintiff may object to some of the
15 questions asked by the defense counsel, the same as the
16 defense counsel had the right to object to some of the
17 questions asked by the plaintiff. It's a two-way
18 street; it goes back and forth. And that process will
19 continue until the witness is excused by both sides.

20 Then another witness will be called, and that
21 process will continue until the plaintiff has presented
22 all the witnesses that they feel are appropriate and
23 rests its case.

24 At the time that the plaintiff rests, then
25 the defense can put on witnesses on their side if they
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1 choose to do so. And that process will then continue,
2 but in reverse order with the defendant putting on
3 witnesses for direct examination and the plaintiff
4 asking cross-examination questions. And that process
5 will continue until the defense has put on all the
6 witnesses they care to present, at which time they will
7 rest.

8 Now, during the presentation of the testimony
9 you will hear from time to time witnesses who will be
10 here in person, and they will sit in this chair and
11 they will testify, and a record is being kept of
12 everything that's being said.

13 And in some cases, witnesses who cannot be
14 here in court, people who are unavailable for whatever
15 reason, their testimony, which has previously been
16 taken in what we know as sworn statements called
17 depositions, may be utilized in lieu of their presence
18 live.

19 And these depositions or sworn statements may
20 be read to you directly into the record, or they may be
21 shown to you on TV screen. But in either event, the
22 testimony is to be accepted by you just as that witness
23 would be here if they were here live.

24 At the time these depositions were taken
25 prior to the trial, both sides were on notice that the
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1 deposition would be taken. Both sides have the right
2 and the availability to ask questions, both direct and
3 leading questions, just as they would say in trial, at
4 the time of the deposition being taken, and both sides
5 would have the right to make any objections for further
6 review by the Court prior to the time that these
7 statements are read to you.

8 So the fact that a witness is not here does
9 not in any way diminish the value of their testimony.
10 The rules provide for this sort of situation.

11 All right. During the course of the trial we
12 will be taking as many breaks as possible, and I will
13 get into that as we proceed.

14 Let me finish off what I was saying about the
15 conduct of the trial. Both sides having rested, both
16 sides will then be able to make what we call the
17 closing argument to you. I think the word "argument"
18 is a misnomer, but nonetheless that's what it's called.
19 It's a sum-up. Each side will have an opportunity to
20 summarize the evidence and the testimony, and it's that
21 time and that time only that they will be allowed to
22 try to persuade you that their side is more right than
23 the other side.

24 That's not the opening statement. Remember,
25 we're talking about closing statement. And each side

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1 will be given an opportunity to make these closing
2 arguments to you, if you will, to summarize the

3 testimony and try to convince you that they're right
4 and the other side is not as right.

5 What the attorneys say in the closing
6 argument phase is not evidence and should not be
7 construed by you as evidence, but merely an ability to
8 summarize, just as they had in the opening statement
9 the ability to speculate on what the witnesses may say.

10 All right. It goes without saying, of
11 course, that all sides have questioned these people
12 prior to trial, so they have a pretty good idea of what
13 the testimony is going to be, and it's provided for by
14 the rules, too.

15 After the closing arguments have been made by
16 both sides, the Court will then give you an explanation
17 of the law that will apply in this case. And then your
18 function will be to take everything that happened in
19 trial, closing arguments of the counsel, the attorneys,
20 put that together with the law, as the Court explains
21 to you, and go into the jury room and reach a decision.

22 It seems like a relatively simple process.
23 It's going to take a while to get done, but it is an
24 orderly and efficient process if everybody does what
25 they're supposed to do.

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25

1 Now, these lawyers, who are presenting the
2 case to you, have tried cases before. They're not
3 neophytes. They're highly experienced and good lawyers
4 on both sides. So they know the rules, and they will
5 endeavor as best they can during the course of
6 litigation to follow the rules and present the case to
7 you in an orderly and understandable fashion. That's
8 their duty, their obligation; that's the oath they take
9 when they become lawyers.

10 Their function is to explain the case to you,
11 basically to present it to you after all the work has
12 been done, for the many months that we've had prior to
13 trial, sometimes years, in putting the case together,
14 and putting it in a position where we can actually
15 present the case to you. All that work has been done
16 and their function at this point is to present it to
17 you so you understand it.

18 The job of the Court is to rule on all issues
19 of law. That's my function. I can't tell the lawyers
20 how to try their case. As long as they stay within the
21 rules. Their strategies and the sequence of events and
22 all the things they have to do are strictly up to them,
23 as long as they don't go outside the parameters of the
24 rules.

25 Just like in any sporting event, if you break

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26

1 the rules you get a flag flown or you get penalized or
2 whatever it may be. But if they stay within the rules,
3 their game plan is their own. They can't tell me how
4 to rule, as well as I can't tell them how to present
5 their case. They can try to persuade me that their
6 understanding of the law is this way and the other side
7 may say no, it's that way. But in the long haul, I
8 have to make the decision.

9 So as well as I can't tell them how to try

10 their case, they can't tell me how to rule, and neither
11 the lawyers nor I can tell you folks how to decide the
12 facts of this case, because that's your function. You
13 are the judges of the facts of the case. The lawyers
14 will present the facts and the evidence through the
15 testimony, and I will be able to tell you what the law
16 is as it applies to these cases. But you alone have
17 the duty and responsibility to decide what the facts
18 truly are. And neither of us, the lawyers nor I, can
19 tell you how to do that.

20 So you see that a trial is broken down into
21 three separate stages. Each of us have an equal duty
22 and responsibility: the lawyers to present the case, me
23 to decide issues of law, and you to decide issues of
24 fact. The whole idea is if everybody does what they
25 are supposed to do, the end result is justice. That's

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27

1 what we're looking for. Takes a little while to get
2 there, but eventually we get there.

3 Now, it's an awesome responsibility and it's
4 going to take us, as I said, a lot longer than most
5 cases, and you're going to have to be patient. You're
6 going to have to be very patient, and you're going to
7 have to understand what your duties and
8 responsibilities are.

9 During the course of the trial, as I said, we
10 will take frequent rest breaks. Whenever you folks
11 feel uncomfortable, whenever you feel you are tired and
12 you need a break -- these seats aren't the most
13 comfortable, I understand that, and you are very close
14 together. That's sort of uncomfortable also. You
15 can't stretch out. You can't do all the things you
16 would like to do while you are sitting there listening
17 to a lot of evidence. You can't go to the refrigerator
18 and get the chips and the dip and all that sort of
19 stuff as you watch TV. Nonetheless, we try to make it
20 as comfortable as we can.

21 If you feel at any time you need a break,
22 raise your hand. Let me know. Don't be shy. I would
23 rather have you let me know than sit there and be
24 uncomfortable. If you need a restroom break, please
25 let us know right away. We will break and let you do

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28

1 what you have to do.

2 It also goes without saying that at any time
3 during these breaks, and from this time on, as we said
4 before, you must not discuss this case among each
5 other. And you will have a tendency to do so. We are
6 all human and when we get into that little jury room
7 back there, and it's not as big as it should be, and
8 there are a lot of you, you will have a tendency to
9 want to discuss what you've already heard. I guarantee
10 that's going to happen. But I'm going to leave it up
11 to each and every one of you to remind the others that
12 it is improper. It wouldn't be fair for you to decide
13 or even talk about in any way or even think about what
14 the testimony is or should have been or anything about
15 the evidence and testimony. I'm sure you all
16 understand that. You have to save that until the end

17 of the trial.
18 There's one other thing I can guarantee:
19 That you will have a tendency to reach conclusions
20 prior to the end. You will hear a piece of evidence
21 and that fits in exactly with what you thought it
22 should be, and you will say: That's it. My mind is
23 made up. And no sooner does that happen, then another
24 witness comes on and you will do a flip-flop. You will
25 go back and forth and back and forth. That's in your

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29

1 own mind. I guarantee that's going to happen.
2 I want you to withstand that. Hold it off.
3 Realize that the final decision could not and should
4 not be made until the end of the case after you've
5 heard everything presented. I will issue the magic
6 words: Now is the time to decide the case. Until you
7 hear those words, I don't want you to decide anything.
8 I want you to be a sponge and absorb it all. These
9 things are going to happen. It happens all the time to
10 all jurors. But you will have to be aware of it and
11 fight any tendency to make premature judgments.

12 As I said, the lawyers in this case will do
13 their very best to try this case honestly, fairly, and
14 as comprehensively as they know how. And I will do the
15 very best I can to decide the issues of law as honestly
16 and fairly and as reasonably as I know. We can only
17 expect that you folks will do your job in deciding the
18 issues of fact as honestly and as reasonably as you
19 know. And as I said, if we all do our job, this case
20 will resolve in a just decision. That's all we can ask
21 you to do.

22 I will ask the attorneys at this time, if
23 you're prepared, to make your opening statement.

24 MR. ROSENBLATT: Yes, Your Honor.

25 Good morning, ladies and gentlemen. One more

30

1 time, my name is Stanley Rosenblatt, and along with my
2 wife and partner, Susan Rosenblatt, we are representing
3 people throughout the State of Florida who are suing
4 the tobacco companies.

5 In terms of the Judge's explanation to you of
6 how a trial works, this is one of two opportunities the
7 lawyers have to look you in the eye and to talk
8 directly to you, opening statement and final argument.

9 So after we're done with opening statement,
10 we don't really get an opportunity to look you in the
11 eye and talk directly to you until maybe three months
12 down the road, after you've heard all the evidence.

13 During the trial itself, the witnesses
14 sitting up there, I'll be asking questions, they'll be
15 cross-examining or vice versa, but we do not speak
16 directly to you.

17 The very last thing that occurs during a
18 trial, after you've heard final argument, after you've
19 heard all the evidence, the Judge instructs you on the
20 law. Believe it or not, the Judge today has no way of
21 knowing -- sure he has a general idea, but he has no
22 way of knowing what his instructions will be, because
23 during this trial he's going to make an enormous number
24 of rulings: This document can come in, this document
25 for one reason or another can't come in. And depending

1 upon the flow of testimony and evidence, the Judge,
2 after the case is all over, after he's made all his
3 rulings, after he's heard everything, is then in a
4 position to instruct you on the law. In my opening
5 statement, I'm not going to be talking about the law a
6 lot to you.

7 And the basic division between a judge and a
8 jury in a jury trial is the judge, of course, is the
9 overall boss of the courtroom, obviously. He's the
10 judge of the law. He decides, when somebody makes an
11 objection: Well, am I going to overrule it or sustain
12 it? You've got nothing to do with that. That's his
13 responsibility. Whether you see a piece of evidence,
14 whether you hear a particular witness, that's the
15 Judge's decision.

16 But once the Judge decides that the document
17 can come in or you can hear a particular witness, what
18 to make of that witness: Is he telling the truth? Is
19 he not telling the truth? What is the significance of
20 this document? What does this document mean to me?
21 And after final argument, does it mean what the
22 plaintiffs' lawyer said or does it mean what the
23 tobacco lawyers said? That's your responsibility, and
24 that's your decision. The basic division: The Judge
25 has control over the law; you people have control over

1 the facts.

2 And to put it in the absolute simplest
3 terms -- because sometimes the concept of proof,
4 jurors, lay people, think of proof in the sense of
5 something very, very scientific. At the simplest
6 level, there is an accident at an intersection, and
7 both drivers say: I had the green light. The other
8 guy ran the red light. There is really no physical
9 evidence, there are no other eyewitnesses. Whoever the
10 jury believes. It's up to the jury. Do you believe
11 this driver or do you believe that driver? Whoever you
12 believe has, in a sense, proved his or her case.
13 That's the way it works.

14 Now, one reason, especially in a long trial,
15 why opening statements are very important -- and by the
16 way, the good news is that the Judge has been very
17 generous. He's basically given us all day to make an
18 opening statement. But when I'm done, at whatever time
19 that is, they don't start until tomorrow morning, so
20 you're not going to have to sit here until 10:00 or
21 11:00. It's just my opening statement today.

22 And many of the witnesses we both have are
23 very, very busy doctors, scientists, experts from all
24 over the country. And in terms of the lawyer doing his
25 or her job and trying to get these witnesses in, we do

1 not have the luxury of bringing witnesses in in perfect
2 chronological order. So a lot of times it's
3 disjointed: Witnesses may be out of turn. So at least
4 the opening statements give us the opportunity in a

5 cohesive, chronological way to tell you what we believe
6 the evidence will show.

7 This is a unique case. Your role in this
8 case is unique. This is the first smokers' class
9 action in the history of tobacco litigation ever to go
10 to trial, in the history of the world. In the history
11 of the world, the first smokers' class action ever to
12 go to trial.

13 And only you people are going to get the full
14 story. We all know we live in a sound bite society.
15 You catch a snippet here or a minute or two on
16 television. We are busy. You have your lives, we have
17 our jobs, we have our family. Few people have the
18 luxury to sit down and read articles in the Miami
19 Herald, or whatever, in-depth. You're going to get
20 this case in-depth.

21 In an individual case, where a smoker sues a
22 tobacco company, it's usually one tobacco company. The
23 reason I say you're going to get the full picture is
24 because in this case we got everybody: Philip Morris,
25 R.J. Reynolds, Lorillard, Brown & Williamson, Liggett,

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34

1 the Council for Tobacco Research, the Tobacco
2 Institute. Everyone connected with the tobacco
3 industry during the last half century is involved in
4 this case.

5 Now, what I want to do before I introduce the
6 class representatives, and I'm going to introduce them
7 in a few minutes, I want to give you a very general
8 historical perspective. We all know that in the last
9 few years tobacco has become a dominant, domestic
10 issue: political, Congress, the President talks about
11 it, people talk about it, it's in the papers all the
12 time. I want to put -- I want to do my best to put
13 this in some kind of historical context.

14 In 1941, 1941, the very beginning of World
15 War II, there was an article that appeared in a medical
16 journal by Dr. Ochsner and Debakey talking about
17 cigarettes causing lung cancer. So in terms of the
18 science, it kind of starts in the early '40s, and
19 amazingly enough, Dr. Debakey, one of the two authors
20 of that article, is 90 years old today, and he's still
21 a heart surgeon in Houston, Texas. The man still works
22 every day. He's 90 years old.

23 We go from 1941 to 1950, where a leading
24 thoracic surgeon, a chest surgeon, who had occasion to
25 remove deceased lungs, which in his judgment were

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35

1 deceased as a result of smoking history, that cigarette
2 smoke had caused the deceased lung, wrote an article.
3 Dr. Graham, along with Dr. Wynder. Dr. Wynder was from
4 Sloan-Kettering, basically saying in that article that
5 smoking was killing our patients with lung cancer.

6 Now, in 1953 -- and this is really a seminal
7 event in the history of the whole issue of is cigarette
8 smoking dangerous, does it cause lung cancer, does it
9 cause other disease. In December of 1953, a
10 revolutionary article appeared in a medical journal
11 called Cancer. The name of the journal was Cancer.

12 And experiments were done at Sloan-Kettering in
13 Manhattan, which is a hospital in New York City, which
14 is a well-recognized cancer center, and the experiment
15 was, they took mice and they painted tars, the residue
16 of tobacco smoke, on the backs of the mice.

17 And lo and behold, what occurred was that
18 about half of the mice got malignant tumors. And this
19 was a revolutionary event in the world of science and
20 in the world of tobacco and health. And many in the
21 scientific community who thought -- who felt that
22 cigarette smoking, even in the early '50s, caused lung
23 cancer thought: Wow, this is a dramatic breakthrough
24 and finally people are going to understand cigarettes
25 cause lung cancer.

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36

1 The response of the tobacco industry was
2 something called The Frank Statement. I'm going to go
3 into detail about The Frank Statement in a few minutes.
4 I'm going to show to you exactly what it was.

5 But in terms of what I'm doing now, The Frank
6 Statement was a full-page ad taken out in every major
7 newspaper in the United States in January of 1954,
8 that's 44 years ago, which was the tobacco industry's
9 response to the American people about the significance
10 or the lack of significance of the mice experiments
11 done at Sloan-Kettering. As I say, I'll show you that
12 a little later.

13 When John F. Kennedy was President of the
14 United States, and the Surgeon General of the United
15 States at that time was a man, a doctor named Luther
16 Terry, President Kennedy and Dr. Terry appointed a
17 scientific commission to study the relationship between
18 smoking and lung cancer, and that scientific commission
19 led to the landmark -- and this is something you'll
20 hear about, The Frank Statement, 1954. You will hear
21 about that repeatedly during this trial. You will also
22 hear repeatedly about the ground-breaking landmark,
23 first significant Surgeon General's Report on this
24 topic, 1964. 1964.

25 Now, in 1964 there were not, relatively

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37

1 speaking, there were not a lot of women smoking. So
2 the lung cancer way back in '64, 34 years ago, was
3 essentially a man's problem. And the basic conclusion
4 reached was that cigarette smoking causes lung cancer
5 in men. 34 years ago, 1964.

6 The evidence will show, ladies and gentlemen,
7 that there is no dispute or controversy in the medical
8 and scientific communities but that cigarette smoking
9 causes lung cancer, heart disease, chronic obstructive
10 pulmonary disease, emphysema and many other diseases.

11 You are going to learn about the New England
12 Journal of Medicine, the Journal of the American
13 Medical Association. You're going to learn in this
14 trial what are the really prestigious medical journals
15 in this country that doctors all over the country rely
16 on.

17 You're going to learn about every specialty,
18 if it's internal medicine, if it's neurosurgery, if

19 it's orthopedic surgery. In every specialty there is a
20 Bible textbook. You're going to find out that amongst
21 these journals, the medical schools, the American Heart
22 Association, the American Lung Association, the
23 American Cancer Society, there is unanimity. There is
24 no controversy but that cigarette smoking causes these
25 diseases.

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38

1 Now, let me make one thing absolutely clear
2 so that we do not get sidetracked. Our position is it
3 is 100 percent, 100 percent, it is not arguable by
4 anyone familiar with the facts, but that cigarette
5 smoking causes lung cancer.

6 Does this mean that every smoker will get
7 lung cancer? Absolutely not. Absolutely not. Some
8 people are lucky. Some people, because of their immune
9 system, because of genetics, can smoke and not get lung
10 cancer; but that in no way, in no way, minimizes the
11 truism that cigarette smoking causes lung cancer. I'll
12 deal with that in a little more detail.

13 And the evidence will show that the tobacco
14 companies have so successfully misled the American
15 people that many highly intelligent people, in 1998,
16 are confused. Well, does it? Does it cause --

17 MR. HEIM: Objection, Your Honor. That's
18 argument.

19 THE COURT: I will sustain that.

20 MR. ROSENBLATT: Many intelligent people are
21 confused about whether cigarette smoking causes these
22 diseases or is merely a risk factor. The evidence will
23 show that among the scientific and medical communities
24 throughout the United States, there is no debate on
25 this issue. It causes it.

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39

1 Now, let me introduce you to the class
2 representatives. I don't know that all of them are
3 here. But they will be here. They will be in and out
4 throughout the trial,

5 Dr. Howard Engle. Please stand. Dr. Engle
6 has chronic obstructive pulmonary disease and
7 emphysema.

8 Frank Amodeo has throat cancer. Stand up,
9 Frank. And he's had a feeding tube for the last 11
10 years.

11 Robert Angell had cancer of the larynx, which
12 required radical neck dissection surgery --

13 MR. MOSS: Your Honor, may we --

14 MR. HEIM: Your Honor, this is just what we
15 said.

16 THE COURT: Sidebar.

17 (Proceedings were had at sidebar.)

18 MR. ROSENBLATT: Raymond Lacey, who I do not
19 see, has a condition known as Buerger's disease, which
20 is a circulatory problem.

21 Mary Farnan has lung cancer, which has
22 metastasized to her brain.

23 Loren Lowery has had cancer of the jaw and
24 mouth.

25 Angie Della Vecchia has had lung cancer and

1 brain cancer.
2 Michael Matyi has had cancer of the vocal
3 cords.
4 Frosene Stevens has had heart disease and
5 congestive heart failure.
6 Did I leave anyone out?
7 THE COURT: Excuse me, counsel, one second.
8 Bailiff indicated somebody wanted a cushion. If one
9 gets it, everybody will want one. But if we can, we
10 will try to make it as comfortable as we can. The
11 chairs are not comfortable. I understand that. We
12 will do the best we can. Just bear with us, folks.
13 Go ahead.
14 MR. ROSENBLATT: Let's talk about basics.
15 There ain't nothing more basic in this case than a
16 cigarette. And this happens to be a Marlboro, the
17 number one seller.
18 It's not food, it's not water, it's not
19 clothing, and it's not shelter. It's a product that
20 isn't necessary. And you will learn how -- you will
21 learn in this case, because of the conduct of the
22 defendants, how an unnecessary product, which has
23 killed millions of people, has become incredibly
24 profitable. It's the biggest money maker in American
25 business.

1 Now, this is not a plaintiff's lawyer
2 talking, saying it's killed millions of people. The
3 Centers for Disease Control and Prevention --
4 MR. KIRBY: Objection. May we approach?
5 THE COURT: Overruled.
6 MR. ROSENBLATT: The Centers for Disease
7 Control and Prevention, a federal agency, for several
8 years now has been saying that this innocent-looking
9 product kills over 400,000 Americans every single year.
10 And the evidence will show in this case the
11 great skill and expertise that has been exercised by
12 the tobacco industry over the years that this product,
13 that does what it does to people and is not a necessary
14 product, has become so profitable.
15 And you will understand in this case there is
16 no industry, there is no business in the world that
17 studies and dissects the American consumer more and
18 better than the tobacco industry.
19 They study kids, they study races.
20 MR. HEIM: Objection, Your Honor. May we
21 approach here?
22 THE COURT: You may if you wish.
23 (Proceedings were had at sidebar.)
24 MR. ROSENBLATT: That is a jury that can eat
25 candy and listen at the same time, I'm sure.

1 The evidence is going to show that this is an
2 industry which studies the American consumer and
3 divides the American consumer up into groups: white,
4 black, Jewish, Christian, young, old.

5 MR. MOSS: Your Honor, objection.

6 MR. KIRBY: Objection.

7 THE COURT: Overruled.

8 MR. ROSENBLATT: And they know how to sell
9 this product, and they know how to appeal to all these
10 groups, and they are terrific at it. They're great at
11 it.

12 And the evidence is going to show that
13 they've been ahead of the government, they've been
14 ahead of the public health community -- let me give you
15 an example historically.

16 A hundred years ago, 1899, the State of
17 Florida banned cigarettes. So did a bunch of other
18 states. Banned cigarettes. Said cigarettes are
19 illegal; you cannot sell cigarettes.

20 Well, that certainly has turned around. And
21 that, of course, was pre-science, pre-real science.
22 When you go back to the early 1900s, it was done on
23 moral grounds, ethical or religious grounds, as to why
24 government and society thought smoking was bad.

25 And then there were people who just decided

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43

1 without research, but based on their common sense, that
2 you light up tobacco with a match, and take it into
3 your body, which consists of cells and tissues and
4 organs, it can't be good for you. Can't be good. But
5 they overcame all that. They've overcome everything.

6 The evidence will show that the tobacco
7 industry understands, and that no industry, no
8 business, has played the game as well and as skillfully
9 as the American tobacco industry. They understand that
10 money is the mother's milk of politics.

11 MR. HEIM: Objection, Your Honor. Argument.

12 THE COURT: It's close. I will sustain it.

13 MR. ROSENBLATT: And when I say they touch
14 every base: public relations, marketing, lobbying, they
15 ingratiate themselves with various groups by spreading
16 money around, charitable money.

17 MR. HEIM: Your Honor, you sustained this
18 objection.

19 THE COURT: Yes, I did. Stay away from
20 argument, counsel. That's for the closing.

21 MR. ROSENBLATT: The evidence will show that
22 the unorganized public health interest of the average
23 American could never match the skill and expertise and
24 talent of the tobacco industry.

25 In the early 1900s, in some circles

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44

1 cigarettes were called coffin nails and cancer sticks.
2 And they've overcome that. It's 1998 and they're still
3 selling that product.

4 Now I want to talk about this issue of
5 causation. I want to tell you a very basic, simple
6 fact. Lung cancer is the most common form of cancer
7 death for both men and women. That is a fact. No one
8 is going to argue with that fact. Lung cancer is the
9 most common form of cancer death for both men and women
10 in the United States.

11 Lung cancer was essentially unheard of. I

12 don't mean zero, but hardly anyone got or died of lung
13 cancer before cigarettes were popularized.

14 In the medical and scientific communities,
15 lung cancer is the cigarette disease. And lung cancer
16 has a horrible prognosis. Of the people who develop
17 lung cancer, 95 percent of them, 95 percent of them,
18 die. And it ain't a pretty death. It's a horrible
19 disease, and it's a horrible death.

20 And that's why doctors, scientists, who saw
21 the statistics, who are in hospitals treating people
22 with lung cancer, said the tragedy here is these deaths
23 don't have to happen. They are preventable.

24 That's what caused the public health crisis
25 and the Surgeon General's Reports. Because the only

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45

1 agenda the Surgeon Generals had and the only agenda
2 doctors had is: Don't smoke. Don't smoke. You may be
3 lucky and not get any disease ever. But if you're a
4 smoker who gets lung cancer, you ain't going to be
5 cured, and you're going to die a horrible death.

6 Now, just so there's no confusion on this
7 issue, we do not say that 100 percent of the people who
8 get lung cancer are smokers. No. We know, and science
9 recognizes, there is a tiny percentage of people,
10 probably 5 percent or less, that are not smokers and
11 get lung cancer. Because if someone works in a uranium
12 mine or with asbestos, or as a nonsmoker but exposed to
13 a lot of secondhand smoke, they can develop lung
14 cancer.

15 But the simple truth of the matter is that
16 the great majority of people who get lung cancer have
17 one thing in common: They are heavy, long-term
18 smokers. And the cause has not been a mystery for 40
19 years. The cause has been obvious.

20 Now, there are things science knows, and
21 there are things that science does not know. If two
22 14-year-old kids take up smoking and they ask a doctor:
23 Which one of us is going to have lung cancer when I'm
24 46 or when I'm 52? Doctor can't tell. Can't tell.

25 There is no way to know whether you will be

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46

1 the smoker who will get lung cancer or whether you will
2 be the smoker who will be lucky because of your
3 genetics, because of your immune system, because of
4 something else, that won't get it.

5 And the tobacco industry has basically
6 convinced the American smoker to play Russian roulette
7 with smoking.

8 Medical science also doesn't know why one
9 smoker will develop lung cancer in ten years, and for
10 another smoker it may take 30 years. Medical science
11 does not know that. These are mysteries.

12 But medical science does know that the
13 function of the lungs is to take in oxygen. What is
14 the basic function of the lung? We're talking lung
15 cancer. What is the basic function of the lungs? It's
16 what life is all about. I just took a breath; oxygen
17 into my lungs.

18 And the other function of the lungs is to get

19 rid of the waste gas of metabolism, which is carbon
20 dioxide. The function of the lungs is not to suck in
21 foreign substances containing thousands of chemicals.
22 That is not the function of the lungs.

23 It has been the strategy of the tobacco
24 industry -- and the evidence will show this -- on the
25 issue of cause and addiction, to try to divorce the

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47

1 American people from their common sense. And somehow
2 convince them that this is a complicated question:
3 There is a lot of controversy; there is a lot of doubt.
4 That's what they've been doing for the last 40 years.

5 Now, the cause of AIDS, we all know --
6 medical science knows the cause of AIDS, the HIV virus.
7 When we talk about this concept of causation, there are
8 some people who can have sex, unprotected sex, with
9 someone who is HIV positive and with someone who has
10 AIDS, and they won't get it. They won't get it.

11 The majority of people, the majority of
12 people that have unprotected sex with HIV or AIDS, will
13 get it. But some won't. And that in no way changes
14 the fact that 100 percent, the HIV virus causes AIDS.

15 And in the same sense, not everyone who
16 smokes gets lung cancer or heart disease or emphysema
17 or chronic obstructive pulmonary disease.

18 Reducing it to something we're all very
19 familiar with, the flu, 20 people can be exposed in a
20 doctor's waiting room --

21 MR. HEIM: Your Honor, this is argument.

22 MR. ROSENBLATT: No, I'm explaining.

23 THE COURT: Side bar.

24 (Proceedings were had at sidebar.)

25 MR. ROSENBLATT: We will have testimony from

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48

1 medical experts explaining this basic principle of how
2 some people can have sex with someone with AIDS and not
3 get AIDS, and how some people can be exposed to the
4 flu, someone is coughing on them and sneezing on them
5 and wheezing on them, they won't get it. But the guy
6 sitting next to them will.

7 And it has to do with the immune system, with
8 genetics. It's not greatly understood in medicine, but
9 it's a fact. Not 100 percent of the people exposed to
10 the flu virus are going to come down with the flu.
11 It's the same principle as to why certain people can
12 smoke 30 years and not get lung cancer or heart disease
13 or some of these other serious diseases.

14 At the simplest level, the question of cause,
15 and this is -- when I say to you that the tobacco
16 industry has -- they talk about risk factor. It
17 doesn't cause -- it's a risk factor for lung cancer,
18 but it doesn't cause lung cancer. The issue of cause.

19 Somebody goes to a party, they have two
20 drinks, and they get drunk. It's no answer to say:
21 Well, it takes six drinks to make me drunk. Two drinks
22 made that person drunk. Is there any -- and the
23 evidence will show, no question about what caused that
24 particular individual to get drunk, the two drinks,
25 even though it might take someone eight drinks or nine

1 drinks. Has to do with toleration. Depends on many
2 factors, but does not alter causation.

3 Some people have bodily resistance to the
4 flu, to AIDS, to tobacco. And this is not widely
5 understood. But in no way, it in no way alters the
6 fact -- and it is a fact and the evidence will show to
7 you it is a fact that cigarette smoking causes lung
8 cancer and these other diseases.

9 During the questioning of jurors, and during
10 the filling out of questionnaires, a lot of talk about
11 warnings. A package of Camel. And I'll go through the
12 warnings, starting at the very beginning, up until the
13 more recent warnings.

14 The system today is, and has been since 1985,
15 that there are four warnings put on cigarette packs
16 that are rotated. That are rotated, four different
17 warnings.

18 This is the warning I'm talking about, word
19 for word: Surgeon General's Warning: Smoking causes
20 lung cancer, heart disease, emphysema, and may
21 complicate pregnancy.

22 This is a critical warning. Let me read it
23 one more time. People talk about warnings, and there's
24 not one out of a million that can quote this word for
25 word, this one sentence.

1 Surgeon General's Warning: Smoking causes
2 lung cancer, heart disease, emphysema, and may
3 complicate pregnancy.

4 That's their product. That's their product.
5 Whether it's Marlboro or Camel or it's Lorillard.
6 Whatever it is, that's their product, and that is what
7 the warning says. Fine.

8 I had the opportunity to take the depositions
9 of the CEOs, the top guys from Philip Morris, Reynolds,
10 Lorillard, Brown & Williamson, and ask a very simple
11 question. I read them this warning. Is it true? Is
12 this warning true, Mr. CEO from Philip Morris? Is it
13 true?

14 The basic answer is: No, it's not true.

15 There's not an industry in America, other
16 than the tobacco industry, who has a warning on their
17 product and then disavows the warning; says the warning
18 is not true.

19 Now, when all the CEOs in April of 1994 went
20 in front of Congress, six of the big shots, lined up,
21 swearing to tell the truth in front of the United
22 States Congress --

23 MR. HEIM: Objection, Your Honor. May we
24 approach the bench?

25 THE COURT: Okay.

1 (Proceedings were had at sidebar.)

2 MR. ROSENBLATT: And when the CEOs were asked
3 the same question before Congress that I asked on the
4 depositions, they gave the same answer, essentially:

5 that this was not true; doesn't cause lung cancer; it's
6 a risk factor; doesn't cause.

7 The evidence will show the CEOs lied to me
8 under oath, and they lied to Congress under oath.
9 Because their records, their documents, their
10 scientists know that it causes. They know that this is
11 a true statement, and they deny it to confuse the
12 American people about what causation is.

13 The CEOs in the tobacco companies in the
14 United States, when they went before Congress, they had
15 a choice: Tell the truth or lie. They chose to lie.

16 MR. MOSS: Your Honor, this is argument.

17 MR. KIRBY: Argument.

18 THE COURT: Well, it is partially argument
19 and partially fact.

20 MR. ROSENBLATT: It's the tone of my voice.

21 THE COURT: I will sustain it in part. Let's
22 get down to what opening is supposed to be absent to
23 any personal view or opinion.

24 MR. ROSENBLATT: Your Honor, the statements I
25 am making will be backed up by evidence from witnesses

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52

1 and documents.

2 The evidence will show, ladies and gentlemen,
3 that this is an industry that has never accepted their
4 responsibility, corporate responsibility, for the
5 devastating health consequences caused by cigarettes.

6 I mentioned this earlier. And I will go down
7 some of the precise language in it. But in order to
8 get everything in focus, the tobacco executives
9 recognized they had a tremendous problem affecting the
10 profitability of their business when the article was
11 published in the journal Cancer, in December of 1953,
12 which showed that by rubbing cigarette tar on the backs
13 of mice, about half those mice developed malignant
14 tumors. This was the response of the American tobacco
15 industry. The Frank Statement was published in over
16 400 newspapers across the United States, and it was
17 done quickly.

18 The initial response to the article was all
19 the CEOs, with the exception of Liggett -- Liggett has
20 about 2 percent of the tobacco market in the United
21 States -- so with the exception of Liggett, all these
22 defendants met at the Plaza Hotel in New York City to
23 devise a strategy: How do we respond to this
24 devastating scientific evidence that cigarette smoking
25 causes lung cancer?

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53

1 See where my thumb is? That's the paragraph
2 I'm going to read now. So even if you can't see it,
3 where my thumb is, in this first section, I'm going to
4 read that paragraph.

5 A Frank Statement to Cigarette Smokers. What
6 does "frank" mean? Honest. Honest. I'm going to
7 level with you people. I'm going to tell you the
8 truth.

9 A Frank Statement to Cigarette Smokers: "At
10 the same time we feel it is in the public interest to
11 call attention to the fact that emanant doctors and

12 research scientists have publicly questioned the
13 claimed significance of these experiments," meaning
14 that from day one they sought to cast doubt on the
15 validity --
16 MR. HEIM: Objection, Your Honor. That's his
17 interpretation.
18 MR. ROSENBLATT: I'm going to have
19 evidence --
20 THE COURT: Overruled.
21 MR. ROSENBLATT: -- that they sought to cast
22 doubt on the validity of the mice experiments conducted
23 at Sloan-Kettering in New York City.
24 Okay. Again, where my thumb is.
25 They say: "Distinguished authorities point
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54

1 out that medical research of recent years indicates
2 many possible causes of lung cancer."
3 In other words, they're telling the American
4 people: Hey, not just cigarette smoking. There's a
5 lot of causes of lung cancer. That's what they're
6 saying in 1954, 44 years ago.
7 Number 3: "There is no proof that cigarette
8 smoking is one of the causes."
9 And Number 4 says that "Statistics purporting
10 to link cigarette smoking with a disease could apply
11 with equal force to any one of many other aspects of
12 modern life. Indeed, the validity of the statistics
13 themselves is questioned by numerous scientists."
14 And you will find from the evidence in this
15 case a recurring theme that the tobacco industry,
16 scientists, and CEOs, are always knocking statistics.
17 They're always knocking epidemiology. They are always
18 saying it doesn't prove causation.
19 Although this is 44 years ago, much of what
20 is in here has remained the basic blueprint of the
21 tobacco industry's deception and fraud on the American
22 people, during the past 44 years.
23 Now, where I have my thumb now -- and this is
24 in bigger print -- I say that the evidence will show
25 that this statement, this statement is a bald-faced
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55

1 lie: "We accept an interest in people's health as a
2 basic responsibility paramount to every other
3 consideration in our business."
4 The documents will show, the witnesses will
5 show, the evidence will show, that what was paramount
6 to every other consideration in their business was not
7 the people's health, but the bottom line:
8 profitability.
9 As you go through the documents, and there
10 are going to be a lot of documents introduced in this
11 case, you will search in vain in any of those documents
12 that reflect the sincere interest in the health of the
13 American people.
14 The documents show, rather, a concerted
15 effort to keep selling their product by belittling the
16 health dangers.
17 Now, specifically, and if my plans work out
18 directly, it's my intention that after the tobacco

19 lawyers do their opening statements tomorrow, that on
20 Wednesday, when we start presenting witnesses, that my
21 very first witness will be Dr. Julius Richmond, who is
22 a pediatrician and who was Surgeon General under
23 President Carter. He is a man in his early 80s,
24 Dr. Richmond. Thankfully, he's still active. He still
25 has a position at Harvard.

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56

1 And what he will tell you -- I will ask him,
2 I will ask Dr. Richmond: Is this a true statement?
3 And Dr. Richmond will tell you no.

4 What he will specifically tell you is that
5 when he was Surgeon General of the United States, a
6 very big deal report was the report of 1979. Because
7 the report of 1979 was the 15-year anniversary of the
8 landmark 1964 Surgeon General's Report.

9 And the purpose of the 1979 Surgeon General's
10 Report was to tell the American people: Hey, what's
11 happened during the past 15 years? Has the evidence
12 gotten stronger than it was in 1964 that cigarette
13 smoking causes lung cancer and other diseases?

14 And the conclusion was 1,000 percent: yes,
15 yes, yes. Because in those 15 years there was
16 scientific study on top of scientific study on top of
17 scientific study, by the best people in the country,
18 verifying, solidifying the conclusions reached in 1964.

19 So, okay, "We accept an interest in people's
20 health."

21 Then it goes on to say: "We always have and
22 always will cooperate closely with those whose task it
23 is to safeguard the public health."

24 And the evidence is going to show and
25 Dr. Richmond will show that's a bald-faced lie. They

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57

1 did the opposite.

2 The 1979 Surgeon General's Report is about
3 this thick. I think it's around like 1200 pages. It's
4 22 separate papers by scholars, medical doctors, all
5 over the country.

6 And the tobacco industry, of course, knew
7 that it was going to be another bombshell, another
8 criticism of cigarettes as causing serious diseases.

9 So what was the response of the tobacco
10 industry which had promised to cooperate closely with
11 those whose task it is to safeguard the public health,
12 and that means the Surgeon General of the United
13 States? They attempted in a press conference, the
14 Tobacco Institute, which is the trade association of
15 all the companies, Philip Morris, Reynolds, Lorillard,
16 the Tobacco Institute, they attempted to preempt the
17 1979 Surgeon General's Report by telling a lot of lies
18 about it, and by trying to cloud the issues.

19 And again, 15 years after the 1964 Surgeon
20 General's Report, they were continuing to say, as you
21 will see from that thick document of the Tobacco
22 Institute, which came out a few days before the 1979
23 Surgeon General's Report, that the bottom line of it
24 was: Hey, don't believe the Surgeon General. Believe
25 us, your friendly tobacco company. Believe us. Don't

1 believe the Surgeon General of the United States.
2 What was their practical response in 1954?
3 Their practical response in 1954? That's in the second
4 column, where I've got my finger. You know, you'll
5 have The Frank Statement with you. I'm confident it
6 will be introduced at some point.
7 I'm going to read that sentence to you. And
8 the practical response: "We're going to be honest with
9 the American people. We're going to cooperate. And
10 we're just as worried as you are. So we are
11 establishing a joint industry group consisting
12 initially of the undersigned, these people here. This
13 group will be known as the Tobacco Industry Research
14 Committee." The Tobacco Industry Research Committee.
15 And the evidence will show this was a
16 brilliant public relations scheme devised not by
17 doctors or scientists, but devised by the tobacco
18 industry and their public relations people, to keep
19 fooling the American public as though the tobacco
20 industry was making a good-faith effort to find out
21 whether cigarette smoking caused lung cancer and other
22 diseases.
23 Now, the Tobacco Industry Research
24 Committee -- and they didn't even try to disguise that
25 this was a unified, unified effort by all the tobacco

1 companies. They called it the Tobacco Industry
2 Research Committee. That name changed over the years
3 to one of the defendants in this case.
4 But what was done, when it was called the
5 Tobacco Industry Research Committee, is still very,
6 very germane to what we're looking at. It became the
7 Council for Tobacco Research. The Council for Tobacco
8 Research. I will talk about that in a few minutes.
9 In terms of the history of big tobacco's
10 effort to misrepresent to the American people, The
11 Frank Statement is a seminal document. Because it's a
12 blueprint. It's a blueprint of all their later
13 strategies which became better, more sophisticated,
14 with more expertise. But this is the underlying
15 blueprint.
16 I'm going to talk about the warnings. I want
17 to give you the history of the warnings. Now, to the
18 great benefit of the tobacco industry's perpetuation of
19 their misrepresentation to the American people is it
20 takes a long time for the disease to come out in most
21 people. You don't get lung cancer from smoking a year
22 or two or three or four. That would be super unusual.
23 It takes a long time.

24 And the evidence will show that the great
25 majority of smokers start smoking when they are very

1 young. Very unusual for someone to start smoking in
2 their 20s or 30s; never smoked before and all of a
3 sudden start smoking in their 20s or 30s. The evidence
4 will clearly show that the great majority of smokers

5 start smoking when they are kids. When they are kids.
6 And many smokers start smoking 10, 11, 12,
7 13. An enormous amount start smoking in their teenage
8 years. And most of those people get sick when they are
9 in their 50s, when they are in their 60s, when they are
10 in their 70s, and when the tobacco industry was putting
11 freebies in the K-rations and the C-rations during
12 World War II, there were no warnings.

13 MR. MOSS: Objection, Your Honor. Objection.

14 THE COURT: Overruled.

15 MR. ROSENBLATT: There were no warnings. And
16 the evidence will show that's what they did. They gave
17 the soldiers of the United States during World War II
18 the great favor of giving them free cigarettes. World
19 War II was from '41 to '45. No warnings of any kind
20 through the '40s, through the '50s, through the early
21 '60s. No warnings of any kind.

22 Millions of people became addicted and sick.
23 Addicted. Before there were any warnings.

24 Now, I want to go over with you the history
25 of the warnings. And remember that none of these

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61

1 warnings were -- it was never a situation where Philip
2 Morris said: You know, I think a decent thing to do
3 would be to have a warning on our package so the
4 American people could really make an intelligent
5 choice.

6 The reason these warnings are on the packs of
7 cigarettes is because the government has mandated it.
8 The government has said: You've got to put warnings on
9 your packages of cigarettes.

10 The very first warning was 1966. And from
11 1966 to 1970, the warnings said as follows: Caution:
12 Cigarette smoking may be hazardous to your health.

13 Now, I'm going to repeat that. Didn't say
14 Surgeon General's Warning. During those four years,
15 1966 to 1970, the warning said, quote: Caution:
16 Cigarette smoking may be hazardous to your health.

17 The government changed the warning in 1970,
18 and there was one warning for 14 years, from 1970 to
19 1984. And that warning said as follows: Warning: The
20 Surgeon General has determined that cigarette smoking
21 is dangerous to your health.

22 That was the one-sentence warning on packages
23 of cigarettes from 1970 to 1984: Warning: The Surgeon
24 General has determined that cigarette smoking is
25 dangerous to your health.

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62

1 Now, in going over the warning which clearly
2 says -- now, starting in 1985, up until day, as I told
3 you, there are four rotated warnings. Four --
4 depending upon where you get a pack of cigarettes, you
5 might get any one of the four. But if you are a
6 regular smoker, you're going to see all four of them,
7 because they just rotate. Average person pays no
8 attention to them. May glance at it every now and
9 then.

10 So the four warnings, which began in 1985
11 right up until the present time, one I've been over

12 with you already which says: Surgeon General's
13 Warning: Smoking causes lung cancer, heart disease,
14 emphysema, and may complicate pregnancy. Doesn't say
15 "may cause." Smoking causes lung cancer, heart
16 disease, and emphysema.

17 Now, in recent years, one of the companies,
18 Liggett, has said: Yeah, this is true. Yeah, it does
19 cause it.

20 So Liggett, in recent years, has taken a
21 different position than the other tobacco companies,
22 and I'll let Liggett's lawyer explain, or some of the
23 other lawyers explain that to you in more detail.

24 And Liggett is also different from the other
25 tobacco companies because Liggett now admits that

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63

1 smoking is addictive. Liggett admits and agrees
2 smoking is addictive.

3 All the other tobacco companies deny it:
4 It's a habit. Millions of people have quit. Anyone
5 with willpower can quit. It's not addictive.

6 But Liggett says: No, no. It's addictive.
7 It's addictive.

8 Now, this warning says: Surgeon General's
9 Warning: Cigarette smoke contains carbon monoxide.

10 That is one of the four rotated warnings:
11 Surgeon General's Warning: Cigarette smoke contains
12 carbon monoxide.

13 Does the average person know that a cigarette
14 is essentially a chemical factory consisting of over
15 4,000 -- over 4,000 -- chemical compounds? So they
16 have a warning that mentions one. Cigarette smoke
17 contains carbon monoxide.

18 MR. MOSS: Your Honor, may we approach,
19 please?

20 THE COURT: Well, yes. I understand what
21 you're saying. All right. Come on over sidebar.

22 (Proceedings were had at sidebar.)

23 THE COURT: Ladies and gentlemen, let me just
24 say this: With reference to the last comments by
25 counsel, that during the period of years the government

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64

1 has made certain rulings and decrees regarding the
2 warnings that were to be placed on cigarettes,
3 packages, these are warnings that the government
4 requires be put on the cigarette packages. And at the
5 time they put these warnings out, and whatever the
6 phraseology is that they use, they indicated at that
7 time that these warnings were sufficient, for purposes
8 of warning the public about the nature and effects of
9 tobacco.

10 Suffice it to say, at that time these were
11 warnings produced by the government sufficient in and
12 of themselves as warnings to the general public.

13 MR. ROSENBLATT: The fact of the matter is,
14 and the evidence will show, that this skinny little
15 thing is a chemical factory. It has over 4,000
16 chemical compounds in it.

17 You've got to understand, and the evidence
18 will show, for example -- and I'm going to talk after

19 lunch. I'm going to talk about addiction.
20 But I want to make this point now. Is there
21 nicotine in the tobacco plant appearing naturally?
22 Yes. Yes. No question about it.
23 But it is a basic principle to understand the
24 difference between the tobacco plant and this highly
25 engineered, very sophisticated end product. Night and
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65

1 day. Night and day.
2 When I talk about addiction, you will
3 understand that every tobacco company has a research
4 and development department with PhDs -- not medical
5 doctors, but PhDs in science and some of the other, and
6 what they can do, and what their technology is capable
7 of doing in transforming the natural tobacco plant into
8 this sophisticated highly-engineered product.
9 And just to give you a sampling of some of
10 the other things, and the evidence will show that the
11 tobacco companies take advantage of the fact that
12 smokers have their lives to live, and they are not
13 studying the ingredients in cigarettes, but just to --
14 contains carcinogens. The definition of a carcinogen
15 is substance that will cause cancer in a human being.
16 There are carcinogens in this product, nitrosamines,
17 benzopyrenes, arsenic, phosphate, nitrates,
18 hydrocarbons.
19 There will be plenty of witnesses. You will
20 at least have heard the names. I'm not going through
21 any explanation other than to make the point. We are
22 talking 4,000 chemical compounds. This is a
23 complicated, sophisticated product.
24 I want to talk to you in a general way about
25 what a Surgeon General's Report is. You know, some
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66

1 people might just think it's a few pages or that the
2 Surgeon General of the United States sits down and just
3 off the top of his or her head writes down a bunch of
4 stuff.
5 A Surgeon General's Report is a compendium
6 put together by scholars, by scientists. And it's
7 usually very, very thick. And as I told you earlier
8 on, the first significant Surgeon General's Report was
9 the one in 1964. Surgeon General Luther Terry, who was
10 appointed by President Kennedy, and the conclusion 34
11 years ago was that cigarette smoking causes lung
12 cancer.
13 And when we talk about Surgeon Generals of
14 the United States, they are all doctors, they are all
15 MDs. And when we go back to 1964, President Kennedy,
16 just a quick review of some history, Lyndon Johnson,
17 Richard Nixon, Gerald Ford, Jimmy Carter, Ronald
18 Reagan, George Bush, Bill Clinton, four Democrats, four
19 Republicans, some conservative presidents, some liberal
20 presidents, but whoever the Surgeon General was, from
21 Kennedy right through Clinton, there's no dispute,
22 there's no controversy, there's no doubt, there's no
23 doubt, they are unanimous in reaching the conclusion
24 that cigarettes are a killer; that they kill over
25 400,000 Americans every single year.

1 And Congress consists of the United States
2 Senate, House of Representatives. Two senators from
3 every state, the total of representatives is 435. They
4 obviously represent the American people. Congress
5 requires the Surgeon General to submit a report to it
6 and the President.

7 In the earlier days, the Surgeon General was
8 part of the United States Department of Health,
9 Education and Welfare. Now I believe it's called
10 Health and Human Services. But it's essentially the
11 same. And year after year the Surgeon General's
12 Reports were titled, quote, "The Health Consequences of
13 Smoking."

14 That was the focus, the health consequences
15 of smoking, the negative consequences of smoking.

16 For example, the 1983 Surgeon General's
17 Report dealt almost exclusively with cardiovascular
18 disease.

19 Now, obviously cardiovascular disease is
20 different than lung cancer in the sense that a lot of
21 things can be responsible for cardiovascular disease.
22 But without question, cigarette smoking is a major
23 cause of cardiovascular disease and heart attacks among
24 Americans in the United States.

25 Many of our witnesses will be MDs, doctors,

1 who functioned as senior scientific editors of the
2 various Surgeon General's Reports over the years.
3 You're going to meet the cream of the crop. You're
4 going to meet those doctors who had more to do with
5 preparing Surgeon General's Reports in the interest of
6 the health of the American people than any jury
7 anywhere has ever met.

8 Now, the 1979 Surgeon General Report, where I
9 said that I anticipated that Dr. Richmond would be my
10 first witness, in that report alone there were 22
11 separate scientific papers. And one of the facts that
12 came out in 1979 is that at that time 100,000 children
13 in the United States under the age of 13 were regular
14 smokers. 100,000 kids under the age of 13 in 1979 were
15 regular smokers. And there were 6 million regular
16 smokers back in 1979 between the ages of 13 and 19.

17 Now, I had been going down the four rotated
18 warnings. I just want to pick that up and make sure.
19 Since 1985 there have been four rotated warnings. One
20 we went over already: Cigarette smoking causes lung
21 cancer, heart disease and emphysema. Cigarette smoke
22 contains carbon monoxide.

23 And there are two more, just so you are
24 familiar with all four of them, which are rotated. The
25 other warning says: Surgeon General's Warning:

1 Smoking by pregnant women may result in fetal injury,
2 premature birth, and low birth weight. That's the
3 third rotated Surgeon General's warning that appears on
4 cigarettes today.

5 Surgeon General's Warning: Smoking by
6 pregnant women may result in fetal injury, premature
7 birth and low birth weight.

8 And the last of the rotated warnings says as
9 follows: Surgeon General's Warning: Quitting smoking
10 now greatly reduces serious risks to your health.

11 Quitting smoking now greatly reduces serious
12 risks to your health.

13 So I started in 1966. There was that one
14 warning that it may be hazardous from 1966 to 1970; and
15 then from 1970 to 1984, the warning that says the
16 Surgeon General has determined that it is dangerous to
17 your health; and then the four rotated warnings which
18 exist at present and which have existed on packages of
19 cigarettes since 1985.

20 Now, let me mention to you some of the
21 witnesses who will be testifying for the Florida
22 citizens in this case. Now, I told you that
23 Dr. Richmond was a pediatrician. He was the Surgeon
24 General of the United States under President Carter,
25 and he was the founder and director of the Federal Head

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70

1 Start Program.

2 And as a pediatrician, he will explain to you
3 his interest in and his involvement with the Head Start
4 Program. Dr. Richmond is presently with the department
5 of social medicine at the Harvard Medical School.

6 We're going to have another Surgeon General
7 for you, and this is Dr. Jesse Steinfeld, who was
8 Surgeon General of the United States under President
9 Nixon; Dr. Ron Davis who is presently at the Henry Ford
10 Health System in Detroit, Michigan, and he has been a
11 former consultant and editor to the United States
12 Surgeon Generals.

13 Dr. Adam Wanner, who is a professor in the
14 department of medicine in pulmonary and critical care
15 at the University of Miami School of Medicine;
16 Dr. Jarrad Goodwin, who is a professor in the
17 department of otolaryngology at the University of Miami
18 School of Medicine; and Dr. Goodwin is the director of
19 the Sylvester Comprehensive Cancer Center at the
20 University of Miami, at the University of Miami School
21 of Medicine.

22 Dr. David Burns, a board certified
23 pulmonologist and the senior scientific editor of
24 several United States Surgeon Generals' Reports, a
25 professor of medicine at the University of California

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71

1 at San Diego, and president of the San Diego American
2 Cancer Society.

3 Now, I just mentioned the term -- and you
4 will hear this a lot when witnesses are called -- the
5 concept of what it means to be board certified in a
6 particular specialty.

7 A doctor can belong to various groups like
8 the American Medical Association, the Florida State
9 Medical Association, simply by paying dues. But in
10 order to become board certified in a given specialty,
11 whether it's pediatrics or pulmonary medicine or

12 internal medicine or cardiology, you have to pass
13 examinations. So someone who is board certified is
14 recognized as being at a higher level within their
15 specialty, within their profession.

16 The great majority of our witnesses -- our
17 experts, our medical experts -- they're not
18 theoreticians. They are not only academicians, many of
19 them teach at medical schools. But the great majority
20 of our witnesses are hands-on doctors who are involved
21 with patient care; not only with patient care, but in
22 the intensive care units, deal with those patients who
23 are the very sickest patients in hospitals.

24 So our witnesses will be speaking from book
25 learning, from medical school, and from their hands-on

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72

1 experience of treating patients for many, many years.
2 And these are doctors that deal with the reality of
3 cancer, with the reality of cancer suffering, and
4 cancer deaths and heart disease suffering, and heart
5 disease deaths.

6 Another one of our experts is Dr. Neal
7 Benowitz, a board certified physician in internal
8 medicine, medical toxicology and clinical pharmacology.
9 He will be one of our key witnesses on the subject of
10 addiction. He is an MD. He is a professor of medicine
11 and psychiatry and pharmacy and chief of the division
12 of clinical pharmacology at the University of
13 California in San Francisco. And he was the senior
14 scientific editor of the 1988 Surgeon General's Report
15 on nicotine addiction.

16 Dr. Thomas Petty, a professor of medicine at
17 the University of Colorado, Health Sciences Center,
18 he's run an addiction clinic for smokers in Denver,
19 Colorado and he has a worldwide reputation in the area
20 of pulmonology, lung disease, lung cancer, emphysema,
21 chronic obstructive pulmonary disease.

22 Dr. David Carr, a retired, more elderly
23 gentleman, a board certified physician in internal
24 medicine specializing in pulmonary medicine who has
25 specialized in cancer treatment for over half a

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73

1 century, for over half a century.

2 Dr. Edward Staples practices at Shands
3 Hospital at the University of Florida in Gainesville.
4 Dr. Staple is board certified by the American Board of
5 Surgery, the American Board of Thoracic Surgery, and
6 the American Board of Surgical Critical Care. He is an
7 associate professor of surgery in the division of
8 thoracic and cardiovascular surgery at the Veterans
9 Administration Hospital. And he is also the surgical
10 director of the cardiac transplant program, artificial
11 heart program, and lung transportation program at
12 Shands Hospital.

13 So when you meet Dr. Staples, you will be
14 meeting a hands-on surgeon who he, himself, takes out
15 the bad heart, takes out the bad lung, and replaces it
16 with hopefully a healthy heart and a healthy lung.

17 Dr. Douglas Johnson is an assistant professor
18 of medicine at Harvard Medical School and the director

19 of the pulmonary function laboratory, and director of
20 ventilator weaning and rehabilitation program at
21 Massachusetts General Hospital, which is the main
22 teaching hospital of the Harvard Medical School.

23 And another one of our witnesses will be
24 Dr. Joe Davis, who is a pathologist, a board certified
25 pathologist, and for many, many years the former Dade

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74

1 County medical examiner.

2 THE COURT: Lunch break? All right. It's
3 12:00. It might be a good time to break for lunch.

4 Folks, what we'll do is have you flip your
5 pads over to the first page, which is the blank page,
6 and just leave them. When you leave here, just leave
7 them on your seat.

8 Now, you may go to lunch and be with anybody
9 you wish, and you can go anywhere you wish for lunch.
10 You can talk about anything in the world you want to
11 talk about except this case or any speculation about
12 it.

13 For those of you who need to make phone
14 calls, I'm not really certain when we're going to break
15 this afternoon, but it probably will be before 5:00.
16 So you are free to make a phone call, but at least --
17 just on schedule. But nothing else about the case,
18 please.

19 We will get back here at 1:30. That will
20 give you time to familiarize yourselves with the
21 restaurants that are available and go through the usual
22 crowd for lunch. Because everybody gets out at 12:00
23 anyway, so let's make it 1:30. Come right back here
24 and meet the bailiff out in the hallway on the 6th
25 floor. And please be prompt. No later than 1:30.

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75

1 One other thing. If you happen to be in any
2 restaurant, the hallway, the elevators, the street or
3 other place, if you see anybody connected with this
4 case, please don't talk to them. We won't talk to you.
5 As I explained earlier, it's not to be impolite; just
6 to isolate you from the other participants. Keep that
7 in mind. We will see you at 1:30.

8 MR. MOSS: Judge, can we do that --

9 MR. HEIM: Can you hold the group until the
10 jury gets out?

11 THE COURT: Yes. Everybody stay here until
12 we get the jury out of the way, please. Just close the
13 door there, please.

14 (The panel of jurors exited the courtroom.)

15 THE COURT: All right. It goes without
16 saying that nobody in the room should have contact with
17 the jurors as they're going. I'm not sure how they're
18 going, if they're taking the elevators.

19 Let me know now, will you, please?

20 THE CLERK: Stairs.

21 THE COURT: All right. I guess we're clear.
22 Folks, thank you. 1:30, please.

23 (A lunch recess was taken at 12:05 p.m.)
24
25

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